IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 27TH NOVEMBER 2007 / 6TH AGRAHAYANA 1929

Crl.MC.No. 3258 of 2007(B)

(S.T. NO. 91/2007 OF THE JUDICIAL FIRST CLASS MAGISTRATE COURT, MAVELIKKARA DTD. 21/04/2007)

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PETITIONER/ COMPLAINANT:

RAMAKRISHNAN, AGED 59 YEARS,
S/O. KUNJUKUNJU, PONAKAM MURI, SREEVALSAM VEEDU,
THEKKEKKARA VILLAGE, MAVELIKKARA.

BY ADV. SRI.R.REJI.

RESPONDENTS/ RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

2. **PRABHAKARAN,**
   DEVI BHAVANAM, KALLUMALA P.O., AKKANATTUKARA
   MURI, THAZHAKKARA VILLAGE, MAVELIKKARA.

BY PUBLIC PROSECUTOR SRI. GIKKU JACOB.

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27/11/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

Crl.M.C. No. 3258 OF 2007 B

Dated this the 27th day of November, 2007

O R D E R

The petitioner is the complainant in a prosecution under section 138 of the Negotiable Instruments Act, 1881. The cheque in question is for an amount of Rs.1,00,000/-, it is submitted. The complaint was filed on 25.7.06. The case was posted to 12.2.07. On 12.2.07 cognizance was taken and the matter stood posted to 21.4.07. On that day, the complainant was absent. He had met with an accident and, therefore, was not able to appear before the learned Magistrate. His counsel made an application. That application was rejected and the learned Magistrate proceeded to dismiss the complaint under section 204(4) Cr.P.C. The short ground was that steps had not been taken to issue summons to the accused.

2. Aggrieved by the said order, the petitioner/complainant filed a revision petition before the Additional Sessions Judge-I, Mavelikara, who by the impugned order, copy of which is produced as Annexure-2, dismissed the said revision petition holding that the revision petition is not maintainable. The petitioner is aggrieved by the impugned orders.

3. The learned counsel for the petitioner submits that the petitioner was most interested in prosecuting his complaint. The first

posting of the case for appearance of the accused was 21.4.07 and the petitioner's inability to appear on that day and take necessary steps was on account of reasons beyond his control. He had met with an accident. He was laid up. His counsel had filed an application on his behalf before the learned Magistrate also. The impugned order works out great prejudice, loss and injustice. That Sessions Judge erred grossly in dismissing the complaint holding that the revision petition was not maintainable. In these circumstances, the impugned orders may be set aside and the petitioner may be given an opportunity to prosecute his complaint, submits the learned counsel for the petitioner.

4. I have considered all the relevant inputs. The order sheet has been placed before me for my perusal. I find merit in the grievance raised by the learned counsel for the petitioner. The matter was posted on the very first occasion for appearance of the accused. The petitioner has satisfactorily explained his inability to take steps in time and to appear before the learned Magistrate on 21.4.07. In any view of the matter, I am satisfied that the lapse on the part of the petitioner to take steps ought to have been condoned and further time must have been granted to the petitioner to take necessary steps. The order of the learned Magistrate is thus not sustainable. The conclusion of the Sessions Court in the revision that the revision is not maintainable is also found to be without any merit whatsoever. The impugned orders, in

these circumstances, warrant interference. The dismissal is at the pre-appearance stage and I am satisfied in these circumstances and it is not necessary to order notice to the accused in the case i.e., the 2nd respondent herein.

5. In the result;

(a) This Crl.M.C. is allowed.

(b) The impugned orders are set aside.

(c) The learned Magistrate is directed to dispose of the complaint filed by the petitioner under section 138 of the Negotiable Instruments Act (S.T.91/07) afresh in accordance with law.

6. The petitioner shall appear before the learned Magistrate on 2.1.08 to continue the proceedings. All necessary steps to issue process to the accused shall be taken within a period of 15 days.

Handover a copy of the order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

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